

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
BRUNSWICK DIVISION**

DONJON-SMIT, LLC,

Plaintiff,

vs.

**ADMIRAL KARL L. SCHULTZ, CAPTAIN
JOHN W. REED, COMMANDER NORM C.
WITT, and COMMANDER MATTHEW J.
BAER, in their official capacity as Officers of
the UNITED STATES COAST GUARD,**

Defendants.

**CIVIL ACTION NO:
2:20-CV-00011-LGW-BWC**

**PLAINTIFF'S SECOND REPLY TO UNITED STATES COAST GUARD'S
OPPOSITION TO PLAINTIFF'S MOTION FOR ORDER REQUIRING DEFENDANTS
AND COMMANDER WITT TO PRODUCE CERTAIN RECORDS
FOR USE AT HIS DEPOSITION
SCHEDULED OF MARCH 9, 2020**

COMES NOW Plaintiff and files this its Second Reply to USCG's Opposition to Plaintiff's Motion for Order Requiring Defendants and Commander Witt to Produce Certain Records for use at his deposition, as follows:

The undersigned counsel is reluctant to file a second reply¹, however, counsel is compelled to bring to the Court's attention concerns regarding Defendants' production of the Administrative Record and why certain records and documents, including emails to and from Commander Witt, were omitted from the Administrative Record.

¹ Counsel also is reminded that the Court prefers to deal with these types of issues during the weekly conference calls; however, the deposition of Commander Witt is scheduled for Monday, March 9, 2020, and Plaintiffs need to review the relevant emails to be able to properly and thoroughly examine Commander Witt with respect to his communications with others.

The Court ordered Defendants to produce the entire Administrative Record on or before 5:00 p.m., October 3, 2019. Defendants produced what Defendants represented was the “entire” Administrative Record. Noticeably absent from that original submission was the very SERT emails Defendants contend were considered and relied upon by Commander Witt in making his decision to allow a deviation. Defendants, just yesterday afternoon, supplemented their production of the “Administrative Record” by producing the SERT emails. Plaintiff’s counsel questioned Defendants’ counsel how such an omission could have occurred, and Defendants’ counsel responded: “The omission was discovered on Wednesday, when the Coast Guard did a QA/QC check of the documents shared with you.” Counsel for Defendants advises that she notified Plaintiff’s counsel “as soon as we discovered it” and the undersigned does not question Counsel’s representation. However, what is clear from this “omission” is that certain records, including emails, were omitted from the initial production and it is reasonable to question whether there are other emails (the very emails that are the subject of Plaintiff’s initial motion) that should have been produced. Defendants should be required to produce any and all emails authored by or received by Commander Witt, especially during the critical time period between October 1, 2019 through January 15, 2020.

CONCLUSION

For the reasons outlined above, together with Plaintiff’s prior submissions, Plaintiff requests an Order compelling Defendants to produce the document that confirms that Commander Witt was, in fact, certified in writing by a NIMS-compliant agency and, further, to produce any and all emails authored by or received by Commander Witt, at least during the critical time periods of October 1, 2019 through January 15, 2020.

Respectfully submitted,

**TAYLOR, ODACHOWSKI, SCHMIDT &
CROSSLAND, LLC**

/s/ Joseph R. Odachowski

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CERTIFICATE OF SERVICE

This hereby certifies that on this day, I electronically filed the *Plaintiff's Second Reply to USCG's Opposition for Order Requiring Defendants and Commander Witt to Produce Certain Records Use At His Deposition Scheduled of March 9, 2020* with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

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This 6th day of March, 2020.

**TAYLOR, ODACHOWSKI, SCHMIDT &
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